In the High Court of Punjab and Haryana at Chandigarh.

Regular Second Appeal No.2111 of 2006.

Date of decision:19.10.2006.

Gora Singh.

...Appellant.

Versus

Nagar Council, Bareta and another.

...Respondents.

...

Coram: Hon'ble Mr. Justice S. N. Aggarwal.

...

Present: Mr.R.K.Singla, Advocate for the appellant.

...

Judgment

S. N. Aggarwal, J.

In suit for permanent injunction, Gora Singh appellant pleaded that a plot measuring 55'x64' is lying vacant on the eastern side of his house and he has been using the said plot for the last 22/23 years as a passage. He sought injunction against the respondents to restrain them from encroaching upon the said plot illegally and forcibly.

The version of the respondents was that the said plot measuring 55'x64' was Shamlat Deh and,therefore, it vested in the respondent-Municipal Committee. It was denied if the said plot was being used by Gora Singh appellant as a passage. Rather a water course

was flowing in the middle of the said land and the appellant has nothing to do with the said plot. Rather, he was intending to encroach upon it and dismissal of the suit was prayed.

Issues were framed.

The parties led the evidence.

The learned trial Court dismissed the suit of Gora Singh appellant vide judgment and decree dated 23.2.2005.

The appellant filed an appeal. The learned Lower Appellate Court up-held the finding of fact recorded by the learned trial Court and dismissed the appeal vide judgment and decree dated 24.2.2006.

Hence, the present appeal.

The submission of learned counsel for the appellant was that in the Jamabandi, Exhibit P-1, the plot in dispute is shown as 'Jumla Mushtarka Malkan' and, therefore, the appellant had a right in it.

This submission has no merit at all. The appellant has no right, title or interest in the plot as the respondents have led the evidence that the said plot is Shamlat Deh which vested in the respondents and, therefore, the respondents are the owners.

It was further submitted that the appellant is using the plot in dispute as a passage and, therefore, he has got a right of easement to use it as such.

This submission has also been considered and it has been found to be without any merit. The appellant has failed to prove if no other passage is available to him and,therefore, the owners of the plot

cannot be restrained from using it in their best interest and in the interest of the public.

Moreover, concurrent findings of fact have been recorded by the learned Courts below and this Court does not find any reason to disturb the said finding of fact.

No substantial questions of law arise.

No merit.

Dismissed.

October 19,2006. (S. N. Aggarwal)
Jaggi Judge